IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No 79 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

COMM. OF CUSTOMS

Versus

AGARWAL EXPORTS

Appearance:

1. CENTRAL EXCISE & CUSTOMS GOLD CONTROL AP No. 79 of 2002
MS MANISHA LAVKUMAR for Petitioner No. 1
M/S TRIVEDI & GUPTA for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 13/08/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Heard Ms. Manisha Lavkumar, learned Additional Standing Counsel for the revenue and Mr KB Trivedi, learned counsel for the respondent-assessee.

2. Having heard the learned counsel for the parties, in our view, the following questions of law arise from the order of the CEGAT:-

(i) Whether, on the facts and in the circumstances of the case, the Tribunal has erred in law in holding that the respondent- exporter

who obtained value based advance license by misrepresenting that condition No.(v)(a) of the Customs Notification No.203/92-Cus dated 19-5-2002 had been complied with, and

who has thereafter transferred the license enabling the transferee to make customs duty free imports on the strength of the said advance license as per the above Notification dated 19-5-2002

is not liable to pay the customs duty and the penalty leviable/recoverable consequent upon detection of the aforesaid misrepresentation?

(ii) Whether on the facts and in the circumstances of the case and having regard to the provisions of the Customs Act, 1962, the Foreign Trade (Development & Regulation) Act, 1992 and the Rules made thereunder as well as the provisions of Export Import Policy 1992-1997 read with condition No.(v)(a) stipulated in the Customs Notification No.203/92-Cus dated 19-5-2002 and

having regard to the finding given by the Commissioner of Customs in the order dated 15-12-2000 that M/s. Mahima Trading Company and Investment Pvt. Ltd exported the goods on behalf of merchant exporter M/s. Agarwal Exports (the respondent) and the said manufacturer had availed the MODVAT benefit of duty paid on input under Rule 57A, but had not reversed the MODVAT credit of inputs utilised in the manufacture of exported final product and thus the respondent had violated the conditions laid down under the aforesaid notification and the provisions contained in para 126 of the Hand Book of

Procedures of the Import Export Policy 1992-97,

the Tribunal has erred in law in holding that the respondent was not liable to pay the customs duty or penalty for the imports made on the strength of the advance licence dated 17-1-1994 obtained by the respondent on the strength of the export in question?

3. We accordingly direct the CEGAT, Mumbai to draw the statement of case and refer the above question for the opinion of this Court under Section 130A of the Customs Act, 1962.

4. Rule is made absolute with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)
zgs/-